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Examiner C. Collins Art Unit 1638		(703) 308-4315

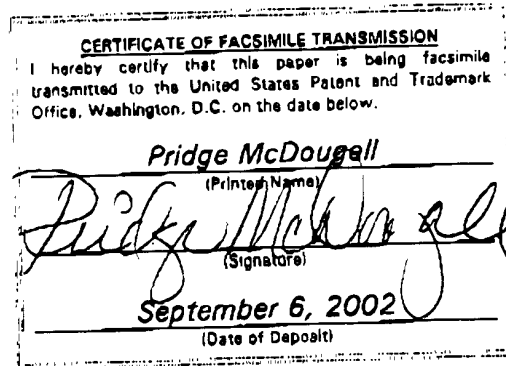
From : Barry S. Wilson**Email Address :** bwilson@foleylaw.com**Sender's Direct Dial :** 858.847.6722**Date :** September 6, 2002**Client/Matter No :** 071344-0306**User ID No :** 3067**MESSAGE:****Re:** U.S. Patent Application Serial No.: 09/491,322**Filed:** January 25, 2000**Title:** METHOD OF USE OF TRANSGENIC PLANT EXPRESSED
ANTIBODIES (as amended)**Inventor(s):** Hein et al.**Attorney Docket No.:** EPI3007F (formerly TSRI 184.2D1)**PLEASE FIND ATTACHED THE RESPONSE TO RESTRICTION REQUIREMENT
FILING FOR THE ABOVE-REFERENCED U.S. UTILITY PATENT APPLICATION.**If there are any problems with this transmission or if you have not
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Atty. Dkt. No. EPI3007F
(071344-0306)
formerly TSRI 184.2D1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hein et al.
Title: TRANSGENIC PLANTS
EXPRESSING ASSEMBLED
SECRETORY ANTIBODIES
Appl. No.: 09/491,322
Filing Date: 01/25/2000
Examiner: Bui, P.
Art Unit: 1638



TRANSMITTAL FOR RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

Sir:

Transmitted herewith is a response to restriction requirement in the above-identified application.

- [X] The Commissioner is hereby authorized to charge any fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date: September 6, 2002

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By: Barry S. Wilson

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Atty. Dkt. No. EPI3007F
(071344-0306)
formerly TSRI 184.2D1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hein et al.

Title: METHOD OF USE OF
TRANSGENIC PLANT
EXPRESSED ANTIBODIES
(as amended)

Appl. No.: 09/491,322

Filing Date: 01/25/2000

Examiner: Bui, P.

Art Unit: 1638

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RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the restriction requirement set forth in the Office Action mailed August 7, 2002, Applicant hereby provisionally elects Group I, Claims 13, 15-27, 29,-65 and 83-91, for examination, with traverse.

The Examiner has required restriction between Claims 13, 15-27, 29-65 and 83-91 (Group I), drawn to a method of passively immunizing a human or non-human animal subject by administering a formulation comprising a dual chain immunoglobulin molecule, Claims 66-73 and 83-91 (Group II), drawn to a method of passively immunizing a human or non-human animal subject by administering a formulation comprising a single polypeptide immunoglobulin, Claims 74-82 (Group III), drawn to a method of preparing an antigen-specific dual chain immunoglobulin, and Claims 74-82 (Group IV), drawn to a method of preparing an antigen-specific dual chain immunoglobulin. Restriction was

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required because the Examiner believes that inventions of group I and II are different from Group III and IV. The Examiner also believes that methods I and II (and similarly III and IV) are distinct because the former requires an immunoglobulin molecule of more than one polypeptide unit while the latter requires only a single polypeptide immunoglobulin. The Examiner asserts that restriction is proper in this case because the inventions allegedly have a separate status in the art as shown by different classifications, recognized divergent subject matter, and the requirement for different areas of search. Applicant respectfully disagrees.

Restriction is appropriate if two or more independent and distinct inventions are claimed in one application. 35 U.S.C. §121. The Patent Office interprets §121 of the patent statute to allow restriction between two or more inventions only if they are able to support separate patents and they are either independent or distinct. MPEP § 803. The examiner is required to provide reasons and/or examples to support restriction. *Id.* It is also Patent Office procedure that even if inventions are determined to be independent or distinct, restriction should not be made if examination can be performed without a "serious burden" on the examiner. *Id.*

It is respectfully submitted that common to all the above Groups is the requirement for antibody to be expressed in plants. Furthermore, the Examiner's reasoning for restricting many of the groups falls far short of the "serious burden" to search requirement. In particular, this case claims priority to several applications filed in the Patent Office as far back as 1989. A good many searches have already been made and the same art continues to be asserted in the various cases. Patentability can be determined for all the Groups without the need for yet an additional search and the attendant costs of divisional filings. If the restriction is made final, Applicant reminds the Examiner of the impact of 35 U.S.C. 121, to render any different restricted groups non-obvious to each other.

Therefore, in view of the above, it is respectfully requested that the restriction requirement be withdrawn, and each of Claims of Group I-IV be examined together. At the very least, the Examiner is urged to combine Groups I and III or combine Groups II and IV.

Respectfully submitted,

Date: September 6, 2002

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